

Submitted by:

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

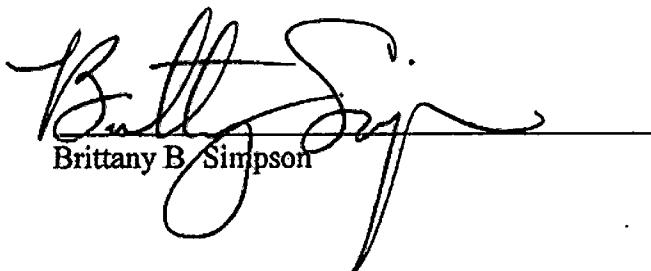


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CERTIFICATE OF SERVICE

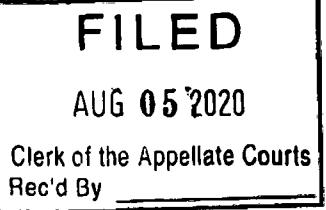
I hereby certify that a copy of the foregoing has been served by U. S. Mail, postage prepaid, and email on this the 15th day of January, 2019, to the following:

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Brittany B. Simpson

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



PROVECTUS BIOPHARMACEUTICALS, INC. v. PETER R. CULPEPPER

Chancery Court for Davidson County
No. 18-1077-III

No. M2019-00662-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Peter R. Culpepper and the record before us, the application is denied.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: PETER R. CULPEPPER

Chancery Court for Davidson County
No. 18-1077-III

No. M2021-00304-SC-WR-CV

ORDER

Peter R. Culpepper, proceeding *pro se*, has filed a Petition for Writ of Mandamus. This Court previously denied Mr. Culpepper's Rule 11 application for permission to appeal in the matter out of which the present petition arises. See Provectus Biopharmaceuticals, Inc. v. Culpepper, No. M2019-00662-COA-R3-CV, 2020 WL 1867043 (Tenn. Ct. App. Apr. 14, 2020), perm. app. denied, (Aug. 5, 2020).¹ To the extent that Mr. Culpepper is requesting that the Court revisit that decision, his request is untimely. See Tenn. R. App. P. 39(b). To the extent that he is seeking to initiate an original action in this Court by means of a petition for writ of mandamus, he may not do so. This Court's jurisdiction is appellate only and this Court may act only when necessary to aid the exercise of its appellate function. See Tenn. Code Ann. § 16-3-201; State v. Irick, 906 S.W.2d 440, 442 (Tenn. 1995). Accordingly, it is ORDERED that the petition is denied.

PER CURIAM

¹ On March 17, 2021, the Court denied the Rule 11 application of Baker, Donelson, Bearman, Caldwell & Berkowitz (Memphis) in Culpepper v. Baker, Donelson, Bearman, Caldwell & Berkowitz P.C., No. E2019-01932-COA-R3-CV, 2020 WL 6112985 (Tenn. Ct. App. Oct. 16, 2020), perm. app. denied, (Tenn. Mar. 17, 2021), which is referenced in but is not the subject of Mr. Culpepper's petition.

BEFORE THE AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

PROVECTUS BIOPHARMACEUTICALS,
INC.,

Petitioner,

v.

PETER R. CULPEPPER,

Respondent.

Case No. 01-17-0005-2136

INTERIM AWARD

I, the undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties and having been duly sworn, and having considered the evidence presented by the parties, including numerous exhibits and the testimony of witnesses under oath, and having also considered the witnesses' demeanor, manner of testifying, opportunity to acquire knowledge about the matters to which they testified, and the extent to which the witnesses' testimony has been supported or contradicted by other credible testimony, hereby finds and awards as follows:

This arbitration was commenced by petitioner Provectus Biopharmaceuticals ("Provectus" or "the Company") against its former Chief Financial Officer, Peter R. Culpepper ("Culpepper" or "Respondent") against the background of the discovery and investigation of financial improprieties by the Company's Chief Executive Officer Craig Dees and Dees' abrupt resignation in 2016. Dees' conduct included claiming reimbursement for alleged business expenses which he could not document. As a result, the Company's Board of Directors initiated an investigation which included hiring a forensic accountant, Larry Solinger, to review the support for and payment of reimbursement for business expenses, primarily travel, to Provectus officers. Based upon its investigation, the Board decided there was just cause for Respondent

Culpepper's termination. While it is undisputed that Respondent was an "at will" employee, there are significant financial consequences depending on whether Culpepper's separation was "for cause" or "without cause." If Culpepper's separation had been "without cause," his employment agreement would have entitled him to two years of severance pay and a 50% credit on his repayment obligation pursuant to what is known as the "Kleba Settlement Agreement."

Petitioner presented evidence through Larry Solinger's testimony and report that Culpepper had obtained \$294,255 in reimbursement for travel expenses that were undocumented. Culpepper, testifying on his own behalf, presented his "reconciliations" of the expenses, showing considerably lesser amounts than Solinger presented.

The Arbitrator believes that the actions and intentions of the principals in this case must be judged in the context of a relatively new start-up company with only four employees, three of whom, excluding Culpepper, were founders. Seeking to develop drugs for the effective treatment of certain kinds of cancers, primarily with the assistance of subcontractors, Provectus raised tens of millions of dollars on an ongoing basis, out of which the officers paid themselves generous salaries, large bonuses, and other benefits, while never showing a profit. Presumably on the premise that it takes money to make money, the officers, and especially Culpepper, traveled both nationally and internationally on a regular basis to raise money, attend medical meetings, and seek investments, a task which it is admitted Culpepper did very well. The evidence shows that Culpepper was reimbursed \$1.7 million over a three year period for alleged business travel and entertainment. Among the damages the Company seeks to recover from Culpepper is the \$294,255 identified by Solinger as undocumented travel reimbursement.

Provectus also contends because Culpepper was terminated "for cause" and prior to December 31, 2018, a pre-existing 2014 Settlement Agreement arising out of a stockholder's

derivative suit (Kleba) over allegedly excessive bonuses paid to Culpepper and others requires Culpepper to forfeit a 50% credit toward the \$2,400,000 total repayment amount he would otherwise be required to repay the Company. The agreement also obligated Culpepper to pay 25% (\$227,750) of the litigation costs incurred in the lawsuit. All cash repayment obligations became immediately payable and bore 10% interest when Culpepper allegedly breached the agreement when he was terminated “for cause.” Finally, section (2)(c)15 of the Settlement Agreement allows Provectus to recover all costs and reasonable attorneys’ fees incurred in enforcing its rights upon default.

Petitioner also seeks its costs and attorneys’ fees permitted under the arbitration clause of the parties’ Amended and Restated Executive Employment Agreement. Section 8(b) provides the Arbitrator will have the right to include in any award “any relief which he deemed proper under the circumstances, including . . . reasonable attorneys’ fees and costs . . .” This provision is separate from the attorneys’ fees provision in the Kleba Settlement Agreement.

In addition to the damages enumerated above, Petitioner seeks the recoupment of all compensation paid to Culpepper from 2013 to 2016, the period during which Petitioner seeks a finding that Respondent breached his fiduciary duty to the corporation.

Finally, Petitioner contends that Respondent’s misconduct regarding improper reimbursement and advances for travel and other business expenses constituted fraud, conversion, constructive fraud, and unjust enrichment, giving rise to a claim for punitive damages.

The factfinder, here the Arbitrator, has had the benefit of presentations by two well-prepared and capable law firms. Also, the actions and intentions of the principals in this case will be judged in the context of a small, start-up company where the founders knew each other

well, and that some amount of trust existed among them, and that the financial controls and procedures initially were somewhat lax. The officers recognized this, which was a reason for seeking someone as a CFO who had the credentials, background and experience that Culpepper represented he possessed. Prior to Culpepper's hire, Provectus had been utilizing outside help, Bible Harris Smith, PC (BHS), a certified public accounting firm, BDO USA, LLP, an auditing firm, and later RSM US LLP, also an accounting and auditing firm. Petitioner continued to utilize the services of these firms after Culpepper was hired. Because of this, Culpepper contends that Petitioner's use of these three firms relieved him of any responsibility for accounting functions. While the evidence establishes that a key duty of Culpepper was to raise capital, the company also sought a CFO who could ultimately be responsible for internal accounting and assure that the company's Securities and Exchange Commission filings (SEC) complied with federal securities law and SEC rules. Relying on Culpepper's resume, the company had reason to believe that they had found someone who could jump right in and assure that proper accounting controls existed, that the day-to-day financial administration was being handled appropriately by the firms already on board, and that he could take care of any SEC filings and similar regulatory requirements. As shown at the hearing all was not as it appeared in Respondent's initial resume¹.

Culpepper's suggestion that he was assigned no specific duties or responsibilities despite his title and that he was not expected, despite the representations on his resume that helped get him hired, to assure proper financial controls were in place and being followed, is disingenuous. For a corporate officer earning more than a half million dollars a year, and who had applied to

¹ Culpepper's resumes, not only the initial one relied upon Provectus when he was hired, but also others identified at the hearing, as well as published articles touting his experience, ability, and giving advice, and bearing his by-line, which he admittedly did not write and was barely familiar with while testifying, do nothing to enhance his credibility.

and represented to Provectus that he had all the tools sought in a Chief Financial Officer, and to still suggest that he did not know what he was supposed to do, and was not bound by or even aware of his employers' Code of Business Conduct or Bylaws, is simply not credible.

According to Culpepper, in addition to having no obligations, to the extent he was even aware of what BHS, BDO or RSM were doing and what they required for a reimbursement to employees from company funds, he never assured himself that it was being done appropriately. He certainly knew how little documentation he personally provided for reimbursement and that large amounts of cash were being approved for Dees without any showing of need, business purpose, or supporting documentation. Even if he did not have full knowledge concerning Dees' recordkeeping practices, Culpepper knew how little he personally provided to obtain reimbursement or advances, and how little accountability he provided for use of the funds.

The Arbitrator is not persuaded that Respondent's "reconciliations" of his expense account after the Solinger findings are credible, and the Arbitrator finds that the Solinger overpayment analysis is a more reliable figure. Respondent's use of reimbursements for canceled airline travel and his inability to account for the cash advances he received for foreign travel show at a minimum a recklessness that cannot be tolerated in a Chief Financial Officer and constitute "just cause" for Culpepper's termination². Had fundraising been Respondent's only responsibility, another analysis might be appropriate.

Provectus points to the airline travel and cash advances for foreign trips as particularly egregious examples of a pattern of unsubstantiated reimbursements which show an intent to defraud the company. Fraudulent intent is often difficult to prove. Sometimes the sheer magnitude of the loss can be sufficient. Here the evidence shows that Respondent allegedly

² Because of the Dees situation alone the annual reports and other filings Culpepper certified would understate Dees compensation and incorrectly state that the Company's financial controls were effective.

incurred \$1.7 million in travel and entertainment expenses in a three year period for which he sought reimbursement and was found by Solinger to have not been entitled to \$294,255 of this amount. Although the examples are numerous and occurred over a significant period of time, the Arbitrator cannot find that the scales tip on the side of intentional fraud as opposed to being grossly inattentive to the responsibility to account for the use of company funds in light of the corporate culture that existed at Provectus at the time³.

Provectus' damage recovery might be much greater had the Arbitrator been willing to find that Respondent's conduct amounted to fraud and conversion and also constituted a breach of fiduciary duty entitling Provectus to recoup the compensation paid to Culpepper during the period of breach, which could be enough to support a claim for punitive damages. However, the Arbitrator's decision is not an attempt to please or displease each party equally, but reflects the fact that Respondent joined a Company with a loose business culture and limited attention to detail which apparently carried over even to its outside accountants and auditors. From the evidence presented at the hearing, clearly there is enough blame to go around.

For the reasons set out above, the Arbitrator finds that:

1. Respondent Culpepper's termination by Petitioner Provectus was for just cause.
2. Petitioner Provectus is entitled to recover from Respondent Culpepper as follows:
 - a. The outstanding balance of \$109,458.00, plus pre-judgment interest, remaining from the \$294,255.00 in undocumented travel expenses.

³ In the summary of claims made by Provectus' counsel in his opening statement and in Provectus' post hearing brief the Company seeks reimbursement for \$27,678.46 in attorney fees advanced to Respondent during a SEC investigation. This investigation and SEC Order were the subject of discussion during the evidentiary hearing. Respondents' objection to the SEC Order being injected into the arbitration proceedings was based on the Commission's statement in footnote 3 of its Order that "The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding."

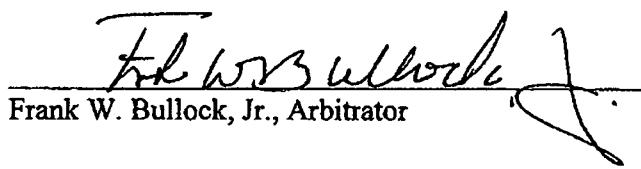
In this arbitration proceeding the Arbitrator has made his own independent findings, concluding that Culpepper was careless and reckless, but not finding that he necessarily acted fraudulently or in bad faith. Under the Delaware law cited by the Petitioner, the Arbitrator does not find it appropriate to require indemnification.

b. \$2,240,000.00 plus \$227,750.00 as Culpepper's share of the litigation costs pursuant to the Kleba Settlement Agreement plus attorneys' fees and costs incurred by the Petitioner in enforcing its rights under Section 2(C)15, plus 10% annual interest beginning December 29, 2016, less any amount previously paid by Culpepper.

c. Except as set out above, each party shall bear its own costs, including attorneys' fees, except as authorized by the Kleba Settlement Agreement, fees of the Arbitrator, and administrative fees of the American Arbitration Association.

d. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied⁴.

Within twenty (20) days of the date of this Award, Petitioner's counsel shall present their Petition for reasonable attorneys' fees and costs pursuant to Section 2(C)15 of the Kleba Settlement Agreement in sufficient detail to allow opposing counsel to assess its reasonableness. Unless otherwise settled between the parties' counsel, Respondent shall respond to Petitioner's request within twenty (20) days of Petitioner's filing. Any other damage items awarded above which cannot be definitively calculated and agreed upon by the parties, consistent with the Award, shall also be identified in accordance with the timelines above.



Frank W. Bullock, Jr., Arbitrator

July 2, 2018

⁴ In an Interim Order dated May 4, 2018, the Arbitrator granted Provectus' Motion for Summary Judgment on Culpepper's counterclaims for defamation and false light invasion of privacy.

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

EMPLOYMENT ARBITRATION TRIBUNAL

PROVECTUS BIOPHARMACEUTICALS,
INC.

Petitioner,

v.

PETER R. CULPEPPER,

Respondent.

CASE NO. 01-17-0005-2136

AWARD

The Arbitrator's July 12, 2018 Interim Award provided that, in this hotly-contested case in which the claims, counterclaims, and defenses presented significant issues of fact and law, each party should bear its own costs and attorneys' fees except to the extent costs and attorneys' fees were available to Claimant under the Kelba Settlement Agreement. As directed by the Arbitrator, Claimant Provecutus filed its Application for attorneys' fees and costs on July 26, 2018. Respondent Culpepper filed his Response to Claimant's Application on August 15, 2018.

The Arbitrator has carefully reviewed the parties' Application and Response. The awarding of attorneys' fees and costs, whether authorized by statute, contract, or otherwise, is something quite familiar to the Arbitrator who has been called upon to do so on numerous occasions. A bedrock principle is that the fees awarded be fair and reasonable. In this case both parties agree that Tennessee Supreme Court Rule 8, RPC 1.5, provides an appropriate guide for the Arbitrator in this case. In considering the factors listed in RPC 1.5, the Arbitrator considers factors 1, 3, 4, 6, and 7 to be the most relevant.

Respondent argues in his Response that Claimant is seeking 100% of its asserted counsel fees and expenses incurred in this case, although it is only entitled to those fees and costs required to enforce the Kleba Settlement Agreement. Respondent also questions counsel's billing rates and the staffing utilized, which he suggests was excessive in this matter.

In reviewing the time records and itemized fees submitted by Claimant's counsel, the Arbitrator notes that a number of timekeepers, in addition to lead counsel, worked on this case. As Respondent correctly points out, the qualifications of these timekeepers and their usual and customary rates are not revealed, and that the rates of even lead counsel vary on occasions. A review of the time records submitted does reveal the names and the charged rates of the additional 25 timekeepers, but the qualifications and experience of these timekeepers do not appear. The Arbitrator notes that the rates charged by two of the named timekeepers exceed that of lead counsel for the Claimant, although the majority of the time charged is by others at considerably lower rates than the hourly rates of Ms. Boyd and Mr. Felker. Utilizing associates and staffers who can be billed at lower rates benefits the client and, in this case, Mr. Culpepper. However, without documentation of who among the 25 timekeepers is a lawyer, paralegal, or a staffer, and their experience, the Arbitrator cannot exercise his discretion in determining a reasonable charge for their work.

The preparation of this matter required the examination of financial data over a number of years, the work history of the Respondent, and the interactions of Proventus officers, employees, and third-party contractors over several years. This preparation included pretrial discovery, including depositions, and the hiring of a forensic accounting firm. A successful presentation of Claimant's case required substantial legal skills to combat the skills utilized by the Respondent. The Arbitrator has had the opportunity and privilege to become aware of the

fees customarily charged by those of similar skills in this locality and in comparable localities. The result obtained by counsel for the Claimant, while perhaps not as much monetarily as Provectus might have hoped, was still significant. Counsel has had a long relationship with the Claimant, resulting in discounted fees for Provectus which also benefits the Respondent. Claimant's counsel and their law firm enjoy fine reputations and exhibited substantial ability in their work in this case, as did their opposition. The Arbitrator has carefully considered these factors in making a subjective judgment concerning the counsel fees and expenses in this matter.

Respondent has indicated that he understands that the Arbitrator can use his discretion in weighing the reasonableness of the attorneys' fees sought in this case. Looking at the hourly rates charged by lead counsel, the Arbitrator believes they are fair and reasonable. The fact that lead counsel's rates changed during the course of this litigation is reasonably explained by the fact that counsel has had a long relationship with the client, and the Arbitrator recognizes that in long-running cases it is not unusual for fees to be discounted by counsel. Even at the highest levels, the Arbitrator does not find the hourly rates charged by Ms. Boyd and Mr. Felker, about whom some background information is provided and whom the Arbitrator has observed at trial, are unreasonable.

The principle issue raised by Respondent Culpepper is that Claimant is entitled to counsel fees and costs only because of the language of the "Stipulated Settlement Agreement and Mutual Release", paragraph (c)15, which reads: "In the event of any default by Defendant with respect to any term(s) of this Agreement, the Pledge Agreement, or the Option Rescission Agreement, the Corporation shall be entitled to recover all costs and reasonable attorneys' fees incurred in the enforcement of the Corporation's rights in such agreements." (The Kleba Agreement). On this point Respondent is correct. Respondent alleges that because Claimant prevailed on only

one of eight claims, the fees and costs sought must be substantially reduced. When Respondent points to Claimant's costs and fees incurred in preparing summary judgment motions on Respondent's defamation and false light claims, he is closer to the mark than he is when he contends that Claimant's defense of Respondent's counter-claims for breach of his employment agreement and a declaratory judgment in his favor regarding the amount he owes under the Kleba Settlement Agreement should not be compensable.

Respondent suggests two different methods the Arbitrator might consider in exercising his discretion in awarding fees; one would be to award Provectus one-eighth (1/8) of its reasonable fees based on the proposition that Claimant prevailed on only one of eight claims, or two, award thirty percent (30%) of the total reasonable fees as a percentage of damages related to the total damage amount sought. Lastly, Respondent contends that the time and labor expended by Claimant's counsel was "egregious". This raises the question of how much preparation is enough, which is often a difficult question to answer.

The central issue in this case was whether the Respondent was terminated "for cause". If Culpepper's separation had been without cause, his employment agreement entitled him to two years' severance pay and a fifty percent (50%) reduction on his repayment obligation under the Kleba Settlement Agreement.

The Arbitrator found in his July 12, 2018 Interim Award that Respondent's history of unsubstantiated expense reimbursements, especially for airline travel never taken, and cash advances for foreign travel and entertainment never verified, represented a recklessness that could not be tolerated in a Chief Financial Officer, and constituted "just cause" for termination. The Arbitrator ordered repayment to the Claimant for Respondent's undocumented travel

expenses. Such a finding was equivalent to a finding that Respondent had converted company funds to his own use and that he had been unjustly enriched.

In seeking all of the costs and attorneys' fees incurred, Claimant contends that the issue of Respondent's termination for cause was "necessarily intertwined" with its other claims against Respondent and also with Culpepper's counterclaims that he was terminated without cause and that he was entitled to a two for one credit under the Kleba Settlement Agreement.

Respondent's objections to some of the charges for which Claimant seeks reimbursement raise some concern, not because the charges are "wildly excessive" as Respondent claims, but because it is impossible for the Arbitrator to determine if they are in fact reasonable, *i.e.*, the hourly rates of the individuals other than Ms. Boyd and Mr. Felker. Other charges incurred, such as the costs of preparing summary judgment motions on Culpepper's defamation and false light counterclaims, can be properly separated from the enforcement of the Settlement Agreement. Respondent is correct that Claimant did not succeed on all of its claims. However, despite the claims on which the Arbitrator found that the evidence presented did not get over the threshold for fraud or breach of fiduciary duty, this case almost in its entirety revolved around whether Respondent was terminated for "just cause" and whether or not he breached the Kleba Settlement Agreement. Consequently, Provectus is entitled to recover a substantial portion of the reasonably substantiated counsel fees and costs it incurred in this arbitration proceeding.

In this case, in which the Claimant prevailed on the major issue litigated, it is difficult to categorize which of the hundreds of time entries in the record relate or do not relate to litigating the "just cause" issue. However, the Arbitrator recognizes there are some unrelated charges. Also, because of the lack of information necessary to weigh the reasonableness of the rates charged by timekeepers other than Ms. Boyd and Mr. Felker, the Arbitrator finds that Claimant

has not met its burden of establishing a reasonable fee for these 25 additional timekeepers. The Arbitrator will not award counsel fees to the Claimant for work done by lawyers other than Ms. Boyd and Mr. Felker. The Arbitrator agrees that most of the facts and issues in this case were inexplicably intertwined with the “just cause” issue. Therefore, the Arbitrator, in the exercise of his reasonable discretion, will attribute seventy percent (70%) of the fees charged by Ms. Boyd and Mr. Felker to the enforcement of the Kleba Settlement Agreement.

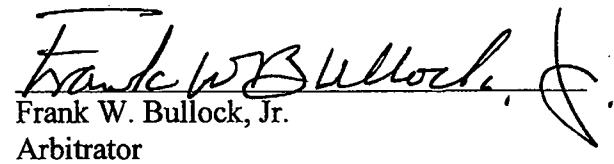
Respondent also raises three issues related to the costs reimbursement sought by Provectus. As for the Solinger fees and expenses of \$60,783.18, the Arbitrator finds that the Solinger evidence was important to the “just cause” issue and the charges reasonable. Respondent also objects to fees charged by Sword and Shield. Because the Arbitrator does not have sufficient information to authorize reimbursement for these costs, the Sword and Shield charges are found not be reimbursable. When the Arbitrator ordered in the Interim Award that except as set out, each party should bear its own costs, the Arbitrator intended this to include any fees of the American Arbitration Association, the Arbitrator, and of the court reporter.

For the reasons set out above, Baker Donelson’s requested attorney fees of \$496,574.00 are reduced by \$131,699.00, which represents the fees of 25 timekeepers whose charges are found not to be reimbursable, leaving a balance of \$364,875.00. Seventy percent (70%) of this amount (\$255,412.50) is awarded to Claimant as reimbursement from Respondent as authorized by the Kleba Settlement Agreement. Claimant is also entitled to recover as part of its costs \$60,783.18 representing the fees and expenses of its expert witness Larry Solinger.

Now, therefore, Claimant Provectus Biopharmaceuticals, Inc. is awarded the sum of \$316,195.68 from Respondent Peter R. Culpepper.

The fees of the American Arbitration Association totaling \$32,260.00, the fees of the Arbitrator totaling \$108,148.63 and the fees of the court reporter shall be borne equally by the parties.

September 12, 2018


Frank W. Bullock, Jr.
Arbitrator

AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT (this “Agreement”) is entered into as of the 28th day of April, 2014 (the “Effective Date”), by and between Provectus Biopharmaceuticals, Inc., a Delaware corporation (the “Company”), and Peter R. Culpepper, CPA, MBA, a resident of Knoxville, Tennessee (“Employee”).

WHEREAS, the Company is a development-stage biopharmaceutical company that is primarily engaged in the business of developing prescription drug candidates PV-10 and PH-10, which are ethical pharmaceuticals for treatment of cancers and chronic severe skin afflictions such as psoriasis and atopic dermatitis, a type of eczema. For purposes of this Agreement, and specifically the restrictive covenants set forth herein, the aforementioned activities and all related activities, of whatever nature, either being performed or planned by the Company during any part of the term of this Agreement are to be considered as part of “the Business” protected by this Agreement (sometimes also referred to as “the Company’s Business”);

WHEREAS, the Company and Employee previously entered into that certain Executive Employment Agreement, dated as of July 1, 2013 (the “Prior Agreement”);

WHEREAS, the Company desires to continue to retain Employee as its Chief Financial Officer and Chief Operating Officer, and Employee desires to be so employed by the Company, subject to the terms, conditions and covenants hereinafter set forth; and

WHEREAS, the Company and Employee desire to amend and restate the Prior Agreement to set forth the terms and conditions pursuant to which the Company will continue to retain Employee as its Chief Financial Officer and Chief Operating Officer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereto hereby agree as follows as of the Effective Date:

Section 1. Employment. In reliance on the representations and warranties made herein, the Company hereby agrees to retain Employee to be its Chief Financial Officer and Chief Operating Officer, to perform such duties and services that are consistent with the position of Chief Financial Officer and Chief Operating Officer as may from time to time be assigned to Employee by the Chief Executive Officer and/or the Company’s Board of Directors (the “Board”).

Section 2. Performance. Employee shall use Employee’s best efforts and skills, on a full-time basis, to perform the duties of his employment, as they may be established from time to time by the Board, consistent with the position and office of Chief Financial Officer and Chief Operating Officer occupied by the Employee. Employee shall obey all rules and regulations of the Company, follow all laws and regulations of appropriate government authorities, and be governed by any and all decisions and instructions of the Board.

Section 3. Compensation. Except as otherwise provided for herein, for all services to be performed by Employee in any capacity hereunder, including without limitation any services as an officer, director, member of any committee, or any other duties assigned him, throughout the Employment Period (as defined herein), the Company shall pay or provide Employee with the following, and Employee shall accept the same, as compensation for the performance of his undertakings and the services to be rendered by him:

(a) Base Salary. Employee will be entitled to an annual gross salary of Five-Hundred Thousand Dollars and no cents (\$500,000.00) (the “Base Salary”), which shall be paid in accordance with the Company’s policies and procedures. Any and all increases to Employee’s Base Salary shall be determined by the Compensation Committee of the Company’s Board of Directors (the “Committee”) in its sole discretion.

(b) Bonus. In addition to the Base Salary, prior to the end of each fiscal year, Employee shall be eligible to receive an annual bonus (the “Annual Bonus”) based upon achievement of performance criteria established by the Committee; *provided, however*, that the performance criteria required to be satisfied before any Annual Bonus may be paid, and the amount and terms of any Annual Bonus based upon the extent to which those performance criteria are achieved or exceeded shall be determined by the Committee in its sole discretion.

(c) Equity Awards. With respect to each fiscal year of the Company ending during the Employment Period, Employee shall be eligible to receive an annual equity incentive award upon the terms and conditions as determined in the sole discretion of the Committee.

(d) Benefit Plans. Employee shall receive, subject to the applicable plan, contract, policy or agreement terms, the benefit of all available employee benefit plans, policies, practices, and arrangements, as may be offered by the Company from time to time, including without limitation any stock option or equity plan, defined benefit retirement plan, excess or supplementary plan, profit sharing plan, savings plan, health and dental plan, disability plan, survivor income and life insurance plan, executive financial planning program, other arrangement, or any successors thereto (collectively hereinafter referred to as the “Benefit Plans”). Employee’s eligibility and entitlement to any compensation or benefit shall be determined in accordance with the terms and conditions of the Benefit Plans and other applicable programs, practices, and arrangements then in effect.

(e) Vacation and Fringe Benefits. The Employee will be entitled to paid vacations in accordance with policies adopted by the Company with regard to its executives generally. All fringe benefits and perquisites will be in accordance with the Company’s existing policies, and the same may be amended from time to time, in the Company’s discretion.

(f) Withholding Taxes. The Company shall have the right to deduct from all payments made to Employee hereunder any federal, state, or local taxes required by law to be withheld.

(g) Expenses. During Employee’s employment, the Company shall promptly pay or reimburse Employee for all reasonable out-of-pocket expenses incurred by Employee in the

performance of his duties hereunder in accordance with the Company's policies and procedures then in effect. Such policies will be subject to change in the Company's discretion.

Section 4. Restrictions.

(a) Acknowledgements. Employee acknowledges and agrees that during the term of Employee's employment because of the nature of Employee's responsibilities and the resources provided by the Company: (1) Employee will acquire valuable and confidential skills, information, trade secrets, and relationships with respect to the Company's business practices and operations; (2) Employee may develop on behalf of the Company a personal acquaintance and/or relationship with various persons, including, but not limited to, customers and suppliers, which acquaintances may constitute Employee's only contact with such persons, and, as a consequence of the foregoing, (3) Employee will occupy a position of trust and confidence with respect to the Company's affairs and the Business involved, as described earlier, throughout the entire world; (4) the Company's competitors, both in the United States and internationally, consist of both domestic and international businesses, and the services to be performed by Employee for the Company involve aspects of both the Company's domestic and international business; and (5) it would be impossible or impractical for Employee to perform his duties for the Company without access to the Company's confidential and proprietary information and contact with persons that are valuable to the goodwill of the Company. Therefore, Employee acknowledges that if he went to work for or otherwise performed services for a third party engaged in a business similar to the Business of the Company, the disclosure by Employee to a third party of such confidential and proprietary information and/or the exploitation of such relationships would be inevitable.

(b) Reasonableness. In view of the foregoing and in consideration of the remuneration to be paid to Employee, Employee agrees that it is reasonable and necessary for the protection of the goodwill and business of the Company that Employee make the covenants contained in this Agreement regarding the conduct of Employee during and subsequent to Employee's employment by the Company, and that the Company will suffer irreparable injury if Employee engages in conduct prohibited by this Agreement.

(c) Non-Compete. During the term of Employee's employment by the Company, and for a period of twenty-four (24) months following termination of employment, in the event that Employee voluntarily terminates his employment with the Company other than for Good Reason (as defined below) or Employee is terminated for Cause (as defined below), neither Employee nor any other person or entity with Employee's assistance, shall manage, operate, control, be employed by, solicit sales for, participate in, advise, consult with, or be connected with the ownership, management, operation, or control of any business within the United States which is engaged, in whole or in part, in any business that is directly competitive with the Company's Business or any portion thereof.

(d) No Solicitation. In addition, during the term of Employee's employment by the Company, and for a period of twenty-four (24) months following termination of employment, in the event that Employee voluntarily terminates his employment with the Company or Employee is terminated for Cause, neither Employee nor any person or entity with his assistance nor any entity which Employee or any person with his assistance or any person who he directly or

indirectly controls shall, directly or indirectly, (1) solicit or take any action to induce any employee of the Company to quit or terminate their employment with the Company or the Company's affiliates, or (2) employ as an employee, independent contractor, consultant, or in any other position, any person who was an employee of the Company or the Company's affiliates within the preceding six months, *provided that* this paragraph will not prevent the Employee or any other person or entity from providing employment to a person who applied for the employment in response a job listing that was not directed primarily at employees or former employees of the Company.

(e) Confidentiality. Without the express written consent of the Company, Employee shall not at any time (either during or after the termination of Employee's employment) use (other than for the benefit of the Company) or disclose to any other business entity proprietary or confidential information concerning the Company, any of their affiliates, or any of its officers. Neither shall Employee disclose any of the Company's or the Company's affiliates' trade secrets or inventions of which Employee has gained knowledge during his employment with the Company. This paragraph shall not apply to any such information that: (1) Employee is required to disclose by law; (2) has been otherwise disseminated, disclosed, or made available to the public; or (3) was obtained after his employment with the Company ended and from some source other than the Company, which source was under no obligation of confidentiality of which the Employee is aware.

(f) Effect of Breach. Employee agrees that a breach of any obligation in this Section 4 cannot adequately be compensated by money damages and, therefore, the Company shall be entitled, in addition to any other right or remedy available to it (including, but not limited to, an action for damages), to an injunction restraining such breach or a threatened breach and to specific performance of such provisions, and Employee hereby consents to the issuance of such injunction and to the ordering of specific performance, without the requirement of the Company to post any bond or other security.

(g) Other Rights Preserved. Nothing in this Section 4 eliminates or diminishes rights which the Company may have with respect to the subject matter hereof under other agreements, the governing statutes, or under provisions of law, equity, or otherwise. Without limiting the foregoing, this section does not limit any rights the Company may have under any agreement with Employee regarding trade secrets and confidential information.

Section 5. Termination. This Agreement shall terminate upon the following circumstances:

(a) General. This Agreement shall be effective as of the Effective Date and shall terminate on the fifth anniversary following the Effective Date, unless terminated earlier as provided hereunder (the "Employment Period"); provided, however, that this Agreement shall be automatically renewed for successive one (1) year periods, unless Employee or the Company notifies the other in writing at least 120 days prior to the termination date of the Agreement of the party's intent not to renew this Agreement, in which event this Agreement shall terminate on the termination date.

(b) Termination for Good Reason. This Agreement, and the Employee's employment under it, may be terminated by the Employee at any time for Good Reason (as that term is defined in Section 6(c)).

(c) Termination Without Cause. This Agreement, and the Employee's employment under it, may be terminated by the Company without Cause but subject to the provisions of this Agreement. It is expressly understood that Employee's employment is strictly "at will."

(d) Cause. This Agreement may be terminated at any time by the Company for Cause. "Cause" for this purpose shall mean (i) Employee committing a material breach of this Agreement and failing to cure that breach, or to discontinue the activity that is breaching this Agreement, within 30 days after being notified by the Company that failure to cure the breach or to discontinue the breaching activity will result in termination of this Agreement for Cause, or (ii) conviction of the Employee of a crime involving moral turpitude, including such acts as fraud or dishonesty, or (iii) the commission by the Employee of a felony, or (iv) Employee willfully or recklessly refusing to perform the material duties reasonably assigned to him by the Company's Board that are consistent with the provisions of this Agreement, when such willful or reckless refusal does not result from a Disability, or (v) Employee's continued willful or gross malfeasance or nonfeasance of the material duties reasonably assigned to him by the Company's Board that are consistent with the provisions of this Agreement, when such malfeasance or nonfeasance does not result from a Disability.

(e) Death/Disability. This Agreement may be terminated by the Company upon Employee's death or his being unable to render the services required to be rendered by him during the Employment Period for a period of one hundred eighty (180) days during any twelve-month period ("Disability").

(f) Implied Covenant of Good Faith and Fair Dealing. The parties acknowledge that the State of Tennessee recognizes that an implied covenant of good faith and fair dealing is a part of every contract, even an employee at will contract. Although such covenant cannot change the express terms of this contract, such covenant applies to this contract.

Section 6. Effect of Termination.

(a) If Employee's employment is terminated (i) voluntarily by Employee without Good Reason, or (ii) by the Company for Cause, the Company shall pay Employee's compensation only through the last day of the Employment Period and, except as may otherwise be expressly provided in this Agreement or in any Benefit Plan, the Company shall have no further obligation to Employee.

(b) If Employee's employment is terminated by the Company other than for Cause, including any discharge without Cause, liquidation or dissolution of the Company (other than due to bankruptcy), discharge within six (6) months following a Change of Control (as defined below), or a termination caused by death or Disability, or if Employee voluntarily resigns for Good Reason, for so long as Employee is not in breach of his continuing obligations under Section 4, the Company shall continue to pay Employee (or his estate) an amount equal to his Base Salary in effect immediately prior to the termination of his employment for a period of

twenty-four (24) months, to be paid in accordance with the Company's regular payroll practices through the end of the fiscal year in which termination occurs and then in one lump sum payable to Employee in the first month of the fiscal year following termination, as well as pro rated bonuses based upon the bonuses paid with regard to the prior fiscal year, plus benefits on a substantially equivalent basis to those which would have been provided to Employee in accordance with the Benefit Plans described in Section 3(d) of this Agreement. Except as may otherwise be expressly provided in this Agreement, the Company shall have no further obligation to Employee.

(c) For purposes of this Agreement, "Good Reason" shall mean:

- (i) a material reduction in the Employee's duties or responsibilities to which he does not agree in advance;
- (ii) any failure by the Company to comply with any material provision of this Agreement other than an isolated, insubstantial and inadvertent failure not occurring in bad faith that is remedied by the Company promptly after receipt of notice thereof given by Employee; or
- (iii) the requirement by the Company to which the Employee does not consent in advance that the Employee relocate his principal place of employment to a location more than fifty (50) miles outside of Knoxville, Tennessee.

For purposes of this Agreement, "Change of Control" shall mean the sale of all or substantially all the assets of the Company; any merger, consolidation or acquisition of the Company with, by or into another corporation, entity or person; or after the effective date of this Agreement, any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 35% or more of the voting power of the then outstanding securities of the Company.

A resignation by the Employee for Good Reason will not become effective until at least 10 days after the Employee notifies the Company of that resignation. In the event that within ten days after the notice from the Employee, the Company challenges Employee's determination that there is Good Reason, the resignation will be suspended and will not become effective until such, if any, time as it is determined by an agreement between the Employee and the Company that is approved by the Company's Board, or through the procedures described in Section 8, that there is Good Reason, at which time the resignation will become effective and will be deemed to constitute a termination of employment by the Employee for Good Reason. If the Company does not challenge the Employee's determination that there is Good Reason within that ten day period, the Company will be conclusively deemed for all purposes to have agreed that there is Good Reason. While a resignation for Good Reason is suspended, the Employee will continue to be employed by the Company under this Agreement and the Employee and the Company will have all the rights and obligations provided in this Agreement.

(d) On termination of employment, Employee (or if terminated by death or Disability, his executor or his authorized agent) shall deliver all trade secrets, confidential information,

records, notes, data, memoranda, and equipment of any nature that are in Employee's (or his estate's) possession or under his control and that are the property of the Company or relate to the business of the Company.

(e) The obligations of Section 4 through Section 9 of this Agreement shall survive the expiration or termination of this Agreement.

Section 7. Representations and Warranties.

(a) No Conflicts. Employee represents and warrants to the Company that Employee is under no duty (whether contractual, fiduciary, or otherwise) that would prevent, restrict, or limit Employee from fully performing all duties and services for the Company, and the performance of such duties and services shall not conflict with any other agreement or obligation to which Employee is bound.

(b) No Hardship. Employee represents and acknowledges that Employee's experience and/or abilities are such that observance of the covenants contained in this Agreement will not cause Employee any undue hardship nor will they unreasonably interfere with Employee's ability to earn a livelihood.

Section 8. Alternative Dispute Resolution.

(a) Mediation. Employee and the Company agree to submit, prior to arbitration, all unsettled claims, disputes, controversies, and other matters in question between them arising out of or relating to this Agreement (including but not limited to any claim that the Agreement or any of its provisions is invalid, illegal, or otherwise voidable or void or any claim by the Employee that he is entitled to resign for Good Reason) or the dealings or relationship between Employee and the Company ("Disputes") to mediation in Knoxville, Tennessee, and in accordance with the Commercial Mediation Rules of the American Arbitration Association in effect at the time. The mediation shall be private, confidential, voluntary, and nonbinding. Any party may withdraw from the mediation at any time before signing a settlement agreement upon written notice to the other party and to the mediator. The mediator shall be mutually selected by and agreed upon by both Employee and the Company and shall be neutral and impartial. The mediator shall be disqualified as a witness, consultant, expert, or counsel for either party with respect to the matters in Dispute and any related matters. The Company and Employee shall pay their respective attorneys' fee and other costs associated with the mediation, and the Company and Employee shall equally bear the costs and fees of the mediator. If a Dispute cannot be resolved through mediation within ninety (90) days of being submitted to mediation, the parties agree to submit the Dispute to arbitration.

(b) Arbitration. Subject to Section 8(a), all Disputes will be submitted for binding arbitration to the American Arbitration Association on demand of either party. Such arbitration proceeding will be conducted in Knoxville, Tennessee, and, except as otherwise provided in this Agreement, will be heard by one (1) arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et. seq.) and not by any state arbitration law. The arbitrator will have the right to award or include in his award any relief

which he deems proper under the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and other enforcement of this Agreement, reasonable attorneys' fees and costs, provided that the arbitrator will not have the right to amend or modify the terms of this Agreement. The award and decision of the arbitrator will be conclusive and binding upon all parties hereto, and judgment upon the award may be entered in any court of competent jurisdiction. Except as specified above, the Company and Employee shall pay their respective attorneys' fee and other costs associated with the arbitration, and the Company and Employee shall equally bear the costs and fees of the arbitrator.

(c) Confidentiality. Employee and the Company agree that they will not disclose, or permit those acting on their behalf to disclose, any aspect of the proceedings under Section 8(a) and Section 8(b), including but not limited to the resolution or the existence or amount of any award, to any person, firm, organization, or entity of any character or nature, unless divulged (i) to an agency of the federal or state government, (ii) pursuant to a court order, (iii) pursuant to a requirement of law, (iv) pursuant to prior written consent of the other of the Company or Employee, or (v) in connection with a legal proceeding to enforce a settlement agreement or arbitration award. This provision is not intended to prohibit nor does it prohibit Employee's or the Company's disclosures of the terms of any settlement or arbitration award to their attorney(s), accountant(s), financial advisor(s), or family members, provided that they comply with the provisions of this paragraph.

(d) Injunctions. Notwithstanding anything to the contrary contained in this Section 8, the Company and Employee shall have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that the moving party must contemporaneously submit the Dispute(s) for non-binding mediation under Section 8(a) and then for arbitration under Section 8(b) on the merits as provided herein if such Disputes cannot be resolved through mediation.

Section 9. General.

(a) Notices. All notices required or permitted under this Agreement shall be in writing, may be made by personal delivery or facsimile or email transmission, effective on the day of such delivery or receipt of such transmission, or may be mailed by registered or certified mail, effective two (2) business days after the date of mailing, addressed as follows:

To the Company:

PROVECTUS BIOPHARMACEUTICALS, INC.
7327 Oak Ridge Highway, Suite A
Knoxville, TN 37931
Attn: Chief Financial Officer

or such other person or address as designated in writing to Employee.

To Employee:

Peter R. Culpepper, CPA, MBA
Provectus Biopharmaceuticals, Inc.
7327 Oak Ridge Highway, Suite A
Knoxville, TN 37931

or to such other address as designated by him in writing to the Company.

(b) Successors. This Agreement shall not be assignable or transferable (whether by pledge, grant of a security interest, sales contract or otherwise) by the Company, except that the Company may assign this agreement to a successor which acquires all or substantially all of the Company's Business and which agrees in writing to be bound by, and fulfill the Company's obligations under, this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Company, its permitted successors and assigns, and the Employee and his heirs or legatees. If Employee dies during the term of this Agreement, the obligation to pay salary and provide benefits shall immediately cease; and, absent actual notice of any probate proceeding, the Company shall pay any compensation due for the period preceding Employee's death to the following person(s) in order of preference: (i) spouse of Employee; (ii) children of Employee eighteen years of age and over, in equal shares; (iii) brothers, in equal shares; or (d) the person to whom funeral expenses are due. Upon payment of such sum, the Company shall be relieved of all further obligations hereunder.

(c) Waiver, Modification, and Interpretation. No provisions of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing signed by Employee and an appropriate officer of the Company empowered to sign the same by the Committee. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior to subsequent time. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of Tennessee. Except as provided in Section 8, any action brought to enforce or interpret this Agreement shall be maintained exclusively in the state and federal courts located in Knoxville, Tennessee.

(d) Interpretation. The headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement. No provision of this Agreement shall be interpreted for or against any party hereto on the basis that such party was the draftsman of such provision; and no presumption or burden of proof shall arise disfavoring or favoring any party by virtue of the authorship of any of the provisions of this Agreement.

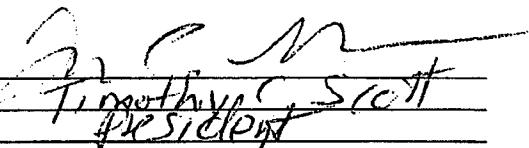
(e) Counterparts. The Company and Employee may execute this Agreement in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute but one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(f) **Invalidity of Provisions.** If a court of competent jurisdiction shall declare that any provision of this Agreement is invalid, illegal, or unenforceable in any respect, and if the rights and obligations of the Parties to this Agreement will not be materially and adversely affected thereby, in lieu of such illegal, invalid, or unenforceable provision the court may add as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as is possible. If such court cannot so substitute or declines to so substitute for such invalid, illegal, or unenforceable provision, (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and (iii) the remaining provisions of this Agreement will remain in full force and effect and not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. The covenants contained in this Agreement shall each be construed to be a separate agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action of Employee against the Company, predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of any of said covenants.

(g) **Entire Agreement.** This Agreement and the Recitals (together with the documents expressly referenced herein) constitute the entire agreement between the parties, supersedes in all respects any prior agreement between the Company and Employee and may not be changed except by a writing duly executed and delivered by the Company and Employee in the same manner as this Agreement. This Agreement amends and restates, but does not novate, the Prior Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first written above.

PROVECTUS BIOPHARMACEUTICALS, INC.

By: 
Name: Timothy C. Scott
Title: PRESIDENT

EMPLOYEE


Peter R. Culpepper, CPA, MBA